

Message Text

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FOLLOWING REPEAT CARACAS 6627 SENT ACTION SECSTATE INFO
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QUOTE C O N F I D E N T I A L CARACAS 6627

E.O. 11652: GDS

TAGS: PLOS VE

SUBJECT: LOS - AMB RICHARDSON'S CONSULTATIONS WITH AMB AGUILAR

REF: CARACAS 6626

1. SEABEDS ISSUES: RICHARDSON NOTED THAT THE BASIC
ELEMENTS OF A COMPROMISE ARE PRESENT I.E, THAT BOTH AN
INTERNATIONAL AND A PRIVATE SYSTEM OF EXPLOITATION WILL
BE USED. THE REMAINING TASK IS TO ENSURE THE VIABILITY
OF BOTH ELEMENTS IN THE SYSTEM OF EXPLOITATION. THE US
HAS DIFFICULTIES WITH THE ICNT AND THE TEXTS WORKED OUT AT
GENEVA, HE SAID, ADDING THAT DOMESTIC CRITICS HAVE CHARGED
THAT THE US DELEGATION HAS BEEN TOO ACCOMMODATING TO THE
DEVELOPING COUNTRIES. HE THEN SUMMARIZED THE PROBLEMS
POSED FOR US, ESPECIALLY BY THE TEXTS ON TECHNOLOGY TRANS-
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FER AND A REVIEW CLAUSE, NOTING THE WORK STILL TO BE DONE
ON ANNEX II, FINANCIAL ARRANGEMENTS, THE ORGANS OF THE
AUTHORITY AND DISPUTE SETTLEMENT. WE SEEK, HE SAID,
ARRANGEMENTS WHICH ARE SUFFICIENTLY CLEAR AND OFFERING
SUFFICIENT PROTECTION TO SEABED MINING INVESTORS THAT HOSE
READY AND WILLING TO INVEST WILL BE ENCOURAGED TO DO SO.
AGUILAR RESPONDED THAT THE PROVISIONS WORKED OUT AT GENEVA ON
TRANSFER OF TECHNOLOGY REPRESENT IMPORTANT CONCESSION BY THE
DEVELOPING COUNTRIES TO THE DEVELOPED COUNTRIES. THE
DEVELOPING COUNTRIES REALIZE SUCH A CONCESSION WOULD HAVE TO

BE MADE TO GET MINING STARTED. BUT IS IS INDISPENSABLE THAT THE ENTERPRISE BE ABLE TO START EXPLOITATION OF THE SITES RESERVED TO IT. THIS MEANS THAT THE ENTERPRISE MUST HAVE THE REQUISITE TECHNOLOGY; THE ARRANGMENT FOR A PARALLEL SYSTEM WAS IN HIS VIEW GEMETRICALLY INCORRECT BUT POLITICALLY NECESSARY. HE WAS CONCERNED THAT THE DEVELOPED COUNTRIES SHOULD HAVE DIFFICULTIES WITH THE NJENGA TEXT ON TECHNOLOGY TRANSFER; IT WAS THE MINIMUM REQUIRED, AND HE DID NOT KNOW HOW IT COULD BE CHANGED TO OFFER LESS. HOWEVER, VENEZUELA WAS WILLING TO LISTEN TO RICHARDSON'S PROPOSALS, AND HE INVITED RICHARDSON TO SEND HIM CONCRETE FORMULATIONS. RICHARDSON PROMISED TO DO SO, NOTING THAT AMB ALDRICH WAS IN THE PROCESS OF DEVELOPING THEM.

REGARDING A REVIEW OF THE SYSTEM OF EXPLOITATION, AUGILAR SAID THE NJENGA TEXT WAS ALSO A CONCESSION ON THE PART OF THE DEVELOPING COUNTRIES. WHAT, HE ASKED, COULD BE OFFERED IN REGARD TO THE PROPOSAL MORATORIUM WHICH WOULD MEET THE DEMANDS OF THE DEVELOPED AND DEVELOPING COUNTRIES? HE THOUGHT THE FORMULA IN ARTICLE 153 WAS REASONABLE. FURTHER HE DID NOT THINK THE ENTERPRISE SHOULD BE PUT IN THE SAME CATEGORY AS PRIVATE CONTRACTORS, SINCE IT IS AN INTERNATIONAL BODY REPRESENTING THE INTERESTS OF THE WORLD COMMUNITY. TURNING TO FINANCIAL ARRANGMENTS, AGUILAR THOUGHT IT WAS CONFIDENTIAL

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SUFFICIENT TO HAVE BROAD GUIDELINES WHICH WOULD ENSURE THAT THE ORGANS OF THE AUTHORITY WOULD NOT ABUSE THEIR POWER IN FIXING FINANCIAL OBLIGATIONS ON PRIVATE CONTRACTORS. HE THEREFORE SUGGESTED THAT SINCE IT WAS VERY DIFFICULT AND TIME CONSUMING TO SET SPECIFIC FIGURES IN THE CONVENTION, IT WOULD BE DESIRABLE TO LEAVE THESE TO THE AUTHORITY AT A LATER DATE.

AGUILAR ACKNOWLEDGED THAT IT IS IMPORTANT THAT CONTRACTORS HAVE THEIR DISPUTES WITH THE AUTHORITY REGULATED IN A FAIR WAY THROUGHT A DISPUTE SETTLEMENT MECHANISM, BUT HE ASKED WHAT ARE THE MATTERS OF DIFFICULTY FOR THE US IN THIS REGARD. RICHARDSON SAID CDS IS FUNDAMENTAL TO THE US BECAUSE IT IS IMPOSSIBLE TO BE COMPLETELY PRECISE IN THE TREATY SO AS TO PRECLUDE DISPUTES OVER CONTRACTORS. HE NOTED THAT ARTICLE 187 IS HELPFUL BUT ARTICLE 191 IS NOT. BEING CONTRADICTIONARY TO 187, 191 SHOULD BE DELETED. NOTING THAT THE US AND VENEZUELA HAVE DIFFERENT APPROACHES TO JUDICIAL REVIEW OF ACTS OF THE ORGANS OF THE AUTHORITY, RICHARDSON REFERRED TO ZULETA'S IDEA THAT A GROUP OF SCHOLARS VERSED IN COMPARATIVE LAW SHOULD STUDY THE MATTER. AGUILAR LATER AGREED THIS MIGHT BE A GOOD IDEA.

RICHARDSON SAID IT WOULD BE IMPOSSIBLE FOR THE US TO GET A TREATY RATIFIED WHICH DID NOT SPELL OUT SPECIFICALLY THE FINANCIAL BURDENS WHICH CONTRACTORS WOULD HAVE TO BEAR; THESE WOULD BE REASONABLE, PROTECTING MINING COMPANIES AGAINST THE IDEOLOGICAL BIASES OF THOSE WHO OPPOSE PRIVATE SECTOR MINING OR HATE MULTINATIONALS. WE DON'T TRUST

THE ASSEMBLY AND THE COUNCIL TO ACT OBJECTIVELY AND THEREFORE NEED SPECIFICITY.

WITH REGARD TO THE REVIEW CLAUSE, WHY COULD WE NOT REVERT TO THE LAST EVENSEN TEXT WHICH THE G-77 SAID COULD BE THE BASIS FOR NEGOTIATION. IT IS A BASIC TENENT OF THE US THAT THE PARALLEL SYSTEM SHOULD CONTINUE UNLESS AND UNTIL THE REVIEW CONFERENCE DECIDES OTHERWISE.

AGUILAR RESPONDED THAT WE COULD AGREE ON MANY THINGS IF WE COULD AGREE ON THE ETMPORARY CHARACTER OF THE SEABED
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REGIME AND THE POSSIBILITY OF REVIEWING IT. THE MORATORIUM CALLED FOR IN THE NJENGA TEXT WAS THEREFORE OF GREAT IMPORTANCE TO HIS GOVERNMENT. HE THOUGHT THE NJENGA TEXT DID NOT PRE-JUDGE THE FINAL OUTCOME OF A REVIEW CONFERENCE; VENEZUELA WAS THEREFORE MAKING AN IMPORTANT CONCESSION SINCE IT BELIEVED THAT A UNITARY SYSTEM OF EXPLOITATION WAS THE BEST AND MOST SUITED TO THE EXPLOITATION OF THE COMMONN HERITAGE OF MANKIND. WHAT THEY WERE ASKING FOR WAS SIMPLY THAT THE PROVISIONS OF A TREATY NOT MAKE IT IMPOSSIBLE TO CHANGE THE REGIME.

2. TACTICS AT RESUMED SESSION:

ADDRESSING TACTICS AT THE RESUMED SESSION, AGUILAR SAID IT WOULD BE A SERIOUS MISTAKE TO TRY TO RE-OPEN THE NJENGA TEXTS. THIS WOULD WEAKEN THE G-77 MODERATES AND STRENGTHEN THE POSITION OF THE EXTREMISTS. IT COULD IN FACT LEAD TO AD DEBATE ON IDEOLOGY AND BASIC PRINCIPLES. THEREFORE, IT WOULD BE A TACTICAL ERROR AT THIS TIME TO GO OVER THE GENEVA GROUND. HOWEVER, HE CONCEDED THAT MAKING CLEAR FOR THE RECORD THAT THE DEVELOPING COUNTRIES WOULD WISH TO RETURN TO THE TEXTS AT A LATER DATE WOULD NOT PRESENT PROBLEMS OF THE KIND HE DESCRIBED. WE SHOULD, HE SAID, TRY TO CONSOLIDATE AND DEEPEN THE WORK OF GENEVA.

RICHARDSON SAID HE AGREED WITH THIS, POINTING OUT THAT THE EC NINE AND JAPAN DO NOT REJECT THE NJENGA TEXTS AS THE BASIS FOR NEGOTIATION, BUT THAT THEY WANT TO TAKE THEM UP RIGHT AWAY RATHER THAN LATER LEST THE IMPRESSION BE LEFT THAT WITH MINOR CHANGES THEY COULD ACCEPT THEM. WE AGREE WITH THE EC AND JAPAN TO THE EXTENT THAT WE MUST MAKE THE RECORD CLEAR THAT WE HAVE PROBLEMS WITH THE TEXTS WHILE ACCEPTING THEM AS THE BASIS FOR FURTHER NEGOTIATION.

3. OTHER ISSUES, INCLUDING THE PRESIDENCY:

A. MARGIN - AGUILAR LIKE RICHARDSON WAS PUZZLED BY THE
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SOVIET MOTIVATION IN PUTTING FORWARD THEIR 300-MILE FORMULA. IT WAS ESSENTIAL TO GET THEM TO CHANGE; IF THE SOVIET FORMULA WAS ADOPTED, MANY IMPORTANT COUNTRIES WOULD NOT SIGN A TREATY. THE MINI PACKAGE ON LL/GDS CANNOT BE

WRAPPED UP UNTIL THE MARGIN ISSUE IS RESOLVED. HE THOUGHT IT IMPORTANT TO USE THE AALCC MEETING IN NEW DELHI TO WORK ON THE RUSSIANS; PERHAPS INDIA AS A BROAD MARGIN STATE COULD DO SOME EFFECTIVE LOBBYING. RICHARDSON AGREED THAT THE AALCC MEETING COULD BE AN OPPORTUNITY TO PUT PRESSURE ON THE RUSSIANS. HE MENTIONED AS WELL OXMAN'S FORTHCOMING TRIP TO MOSCOW AS A FURTHER STEP WE ARE TAKING TO BRING THE RUSSIANS AROUND.

B. LEGAL STATUS OF THE EEZ:- RICHARDSON SAID WE ACCEPT THE CASTANEDA COMPROMISE AS IT GOT INTO THE ICNT. WE HAVE SUPPORTED THE SOVITS ON THEIR CHANGE IN ARTICLE 55 BECAUSE TI HAD BEEN DROPPED OUT OF THE COMROMISE WHEN INCORPORATED IN THE ICNT. BUT WE DO NOT WANT TO LEAVE ANY INFERENCE THAT THE ICNT IS NOW DEFICIENT; IT IS NOT. HE SAID WE WOULD WANT TO MAKE CLEAR THROUGH AN INTERPRETIVE STATEMENT OR COLLOQUY AT THE CONFERENCE THAT THE TEXT IS CLEAR ON HIGH SEAS FREEDOMS OF THE EEZ. AGUILAR THOUGHT THERE WOULD BE NO DIFFICULTY IN MAKING THIS CLEAR AT AN APPROPRIATE MOMENT, FOR RICHARDSON WAS RIGHT THAT THE TEXT COULD ONLY BE READ AS HE HAD INDICATED.

C. WHALES - RICHARDSON SAID IT WOULD BE VERY IMPORTANT TO GET SOME IMPROVEMENT IN THE ARTICLE ON MARINE MAMMALS IN ORDER TO IMPROVE THE CHANGE OF RATIFICATION OF AN EVENTUAL TREATY. AGUILAR TOOK NOTE, NOT APPEARING TO DEMUR.

D. MARITIME BOUNDARIES AND RELATED DISPUTE SETTLEMENT- MORALES SPELLED OUT VENEZUELAN CONCERNS ABOUT THE PRINCIPLES TO GUIDE DELIMITATION OF MARITIME BOUNDARIES. VENEZUELA'S VITAL INTERESTS REQUIRED ADOPTION OF THE QUITTY AS OPPOSED TO THE QUIDISTANCE PRINCIPLE. VENEZUELA COULD NOT ACCEPT CONFIDENTIAL

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COMPULSORY ARBITRATION OF MARTIME BOUNDARY DISPUTES.

E. REGIME OF ISLANDS - MORALES, REFERRING TO THE AVES ISLAND, EXPRESSED DISATISFACTION WITH THE PRESENT ICNT ARTICLE ON REGIME OF ISLANDS.

F. ORGANIZATION OF WORK OF RESUMED SESSIONS - BEFORE TURNING TO THIS SUBJECT, AGUILAR SAID (AFTER RICHARDSON REFERRED TO THE IMPORTANCE WE ATTACH TO MAKING SOME CLARIFYING AMENDMENTS TO THE ARTICLES ON MARINE SCIENTIFIC RESEARCH) THAT THERE SHOULD IN HIS VIEW, BE NO DIFFICULTY IN GETTING THE MSR LANGUAGE OF THE CASTANEDA GROUP INTO THE ICNT. AGUILAR AGREED WITH RICHARDSON THAT NEGOTIATING GROUPS 1 AND 2 SHOULD CONTINUE THEIR WORK, THE FORMER STARTING WITH ANNEX II. BOTH ALSO AGREED THAT THERE WAS LITTLE MERIT IN CONTINUING THE WORK OF NG 3 ON THE ORGANS OF THE AUTHORITY. WHILE AGUILAR AGREED IT WOULD BE USEFUL TO HAVE A GROUP OF

SHCOLARS WORK ON SEABEDS DISPUTE SETTLEMENT HE THOUGHT ENGO NOT ZULETA SHOULD BE STIMULATED TO CONVENE SUCH A GROUP. ENGO COULD BE ENCOURAGED TO DO THIS,AND HE MIGHT BE TROUBLESOM IF ZULETA NOT HE WERE THE CONVENOR. GUILAR PROPOSED TO CONTINUE HIS ARTILE-BY-ARTICLE REVIEW OF THE COMMITTEE II TEXT. HE COULD FINISH THIS "READING" IN FOUR MEETINGS. HE THOUGHT HIS AN ESSTNEITL EXERCISE: IT WOULD SHOW HOW MUCH HAD ALREADY BEEN AGREED, AND, EVEN IF THERE WERE NO OUTCOME (CHANGE IN HE ARTICLES) MANY DELEGATIONS WOULD FEEL BETTER.THE EXERCISE COULD SAVE TIME AND TROUBLE IN THE END. RICHARDSON AGREED. BOTH AGREED NG 4 AND 5 NEED NOT MEET AT NEW YORK. NG 7 WAS ANOTHER MATTER. THE WORK OF THE GROUP SHOULD,BOTH RICHARDSON AND AGUILAR AGREED, BE LEFT TO JUDGE MANNER TO DECIDE. RICHARDSON NOTED THAT THE DISPUTE SETTLEMENT ASPECT CONFIDENTIAL

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OF NG 7 DID REQUIRE FURTHER WORK. HE THOUGHT PROF SOHN'S SMALL WORKING GROUP MIGHT CONTINUE ITS WORK IN NEW YORK. AGUILAR AGREED BUT THOUGHT THAT SINCE THIS WAS SUCH A SMALL GROUP IT SHOULD IN DUE COURSE BE EXPANDED TO TEST FORMULAS DEVELOPED BY SOHN. REFERRING TO SOHN'S SUGGESTIONS DESIGNED TO BRIDGE DIFFERENCES OF APPROACH TO ARBITRATION OF DISPUTES OVER MARITIME BOUNDARIES,BY EXCHANGING THOSE WHICH AROSE PRIOR TO THE SIGNATURE OF THE TREATY, AGUILAR NOTED THAT IT IS HARD TO FIX THE TIME WHEN A DISPUTE ARISES. RICHARDSON SUGGESTED THAT ONE MIGHT FILE A DECLARATION WITH THE UN SECRETARY GENERAL GIVING NOTICE THAT A DISPUTE EXISTED AS OF SUCH AND SUCH A DATE. AGUILAR THOUGHT THAT IDEA MERITED FURTHER CONSIDERATION AND MIGHT BE REFINED AT THE NEW YORK SESSION. REFERRING TO THE ICNT TEXT ON MARITIME BOUNDARIES, AGUILAR CONCEDED THAT IT IS PRETTY BALANCED. HE NOTED THAT THE HARD-LINE PROPONENTS OF EQUITY AND EQUIDISTANCE ARE PRETTY EVENLY DIVIDED, ABOUT 28 TO 22 RESPECTIVELY. PERHAPS WE SHOULD DO SOME LOBBYING AMONG THE INDIFFERENT DELEGATIONS TO GET THEM TO SUPPORT THE PRESENT TEXT. RICHARDSON SAID THIS WOULD BE GOOD FROM THE VIEWPOINT OF THE US WHICH GENRALLY LIKES THE TILT TO EQITY, BUT WE COULD LIVE WITH DELETION OF THE WHOLE ARTICLE.

4. AGUILAR STATED THAT THE REASONS WHICH MIGHT HAVE BEEN VALID LAST SPRING FOR AMERASINGHE'S CONTINUATION INOFFICE (AND HE DID NOT CONCEDE THEY WERE THEN VALID) ARE NO LONGER VALID. THE LATIN AMERICAN GROUP HAD ACQUIESCED IN THE CONFERENCE DECISION AND HAD SHOWN ITS DESIRE TO CONTRIBUTE TO THE WORK OF THE CONFERENCE.NOW THE ISSUE MUST BE SETTLED. THEY COULD NOT LIVE WITH THE ASIAN RESOLUTION WHICH THE CONFERNECE HAD ADOPTED AT GENEVA. THE LATINS, AND THEY WERE NOT ALONE, HAD LOST CONFIDENCE IN AMERASINGHE; HE HAD NOT FOR ONE THING BEEN HONEST WITH THEM ABOUT HIS TRUE INTENTIONS DURING THE FIGHT OVER THE PRESIDENCY. THE ASIANS HAVE GOOD CANDIDATES --NANDAN, KOH. THE SOVIETS

AT THE END OF THE GENEVA SESSION HAD INDICATED THEY THOUGHT
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THE CONDITIONS THEY HAD STIPULATED FOR SUPPORT OF AMERASINGHE
HAD NOT BEEN FULFILLED. AGUILAR THEREFORE INTENDS TO RAISE
THE PRESIDENCY ISSUE AT THE RESUMED SESSION, EITHER AT THE
BEGINNING OR LATER: THEY WOULD NOT ACCEPT AMERASINGHE AS
PERMANENT PRESIDENT AND THE MATTER MUST BE SETTLED.
RICHARDSON SAID WE HAD HEARD THE SOVIETS AND FRENCH MIGHT
RAISE THE MATTER AT THE UNGA IN THE 5TH COMMITTEE. IF THE
US FOUND SUFFICIENT UNHAPPINESS WITH AMERASINGHE AND THAT
IT WOULD BE AN ISSUE AT THE UNGA, WE WOULD FEEL THAT
THERE SHOULD BE AN UNDERSTANDING AT THE RESUMED LOS SESSION
THAT AMERASINGHE SHOULD NOT BE PRESIDENT FOR THE 8TH SESSION.
WHILE WE SHOULD NOT SEEK TO HAVE HIM REMOVED FROM PRESIDING
AT THE RESUMED SESSION, WE SHOULD GET HIS UNDERSTANDING THAT
HE WOULD STEP DOWN BEFORE THE 8TH SESSION AND LET THE ASIAN
GROUP AFTER SEPTEMBER 15 ELECT A NEW CANDIDATE FOR PRESENTATION
TO THE 8TH SESSION. RICHARDSON AURGED AGUILAR TO SPEAK TO
NANDON, KOH, THE SOVITS AND FRENCH BEFORE THE RESUMED
SESSION. THE US DOES NOT WANT A FIGHT ON THIS MATTER AT
THE RESUMED SESSION. AGUILAR SAID THE LATINS MUST SPEAK
OUT AT THE RESUMED SESSION. RICHARDSON AGREED BUT STRESSED
THAT HOW THEY DO SO WOULD BE IMPORTANT. AGUILAR THOUGHT
THE ASIANS ARE NOW WILLING TO DECIDE THE MATTER, UNDERSTANDING
THE NEED TO DO SO AS EARLY AS POSSIBLE.
CROWLEY

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